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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DOMINO'S PIZZA FRANCHISING LLC, a Delaware limited liability company; and DOMINO'S PIZZA MASTER ISSUER LLC, a Delaware limited liability company,

Plaintiffs,

v.

CALVIN YEAGER, an individual; VALLEY PIZZA, INC., a Nevada corporation; and LAKESIDE PIZZA, INC., a California corporation,

Defendants.

CASE NO. 3:10-CV-560

MOTION TO ENFORCE JUDGMENT PURSUANT TO FRCP 70 AND/OR FRCP 71

COMES NOW, plaintiffs DOMINO'S PIZZA FRANCHISING LLC and DOMINO'S PIZZA MASTER ISSUER LLC (collectively, "Domino's"), by and through their counsel, Armstrong Teasdale LLP, hereby moves this Court for an order to compel Matthew Matlock and/or Melissa Yeager to: (1) return the Operations Manual; (2) return the Customer List; and (3) transfer the telephone number 775-265-2929, in that the defendants, and those acting in concert or in privity with defendants, have failed and refused to do so, pursuant to the Order of Final Judgment, dated May 4, 2010.

This motion is based upon Fed.R.Civ.P 70 and 71, the Points and Authorities attached hereto, and such further argument the Court may permit.

DATED this 24th day of September, 2010.

ARMSTRONG TEASDALE, LLP

By: ______________________

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POINTS AND AUTHORITIES

INTRODUCTION

This matter involves a dispute between a franchisor and franchisee, in which Final Judgment has already been rendered in the United States District Court for the Eastern District of Michigan ("Michigan Federal Court") in favor of Domino's, the franchisers of the well-known pizza delivery business bearing the "DOMINO"S PIZZA" name and logo. Defendants Calvin Yeager, Valley Pizza, Inc. ("Valley") and Lakeside Pizza, Inc. ("Lakeside") had been the owner and operator of franchises of Domino's. Yeager is President of both Valley and Lakeside.

In 2007, Domino's and defendants entered into two Franchise Agreements for the Valley and Lakeside franchises. Yeager also agreed to make full and prompt performance of all of the corporations' obligations as an Owner. Under the Franchise Agreements, defendants agreed that, upon termination of the Franchise Agreements, they would:

1. Immediately return all copies of the Operating Manual and all Customer Lists;
2. Surrender all telephone numbers to Domino's;
3. Immediately pay all royalty fees, advertising contributions and other charges which are due and owing;
4. Make the stores accessible and available to Domino's; and
5. Not directly or indirectly own, engage in, be employed by, advise, assist, invest in, franchise, make loans to, or have any other interest, whether financial or otherwise, in any other carry-out pizza delivery

store business located at the premises store or within ten miles of the premises store.

Based upon defaults under the Franchise Agreements, Domino's terminated the Franchise Agreements on November 13, 2009.

Thereafter, defendants failed to comply with the aforementioned provisions of the Franchise Agreements. As a result, Domino's commenced an action with the Michigan Federal Court, seeking, among other things, a preliminary injunction. On January 25, 2010, the Michigan Federal Court granted a preliminary injunction against defendants ("Injunction Order"), requiring defendants to comply with the aforementioned provisions of the Franchise Agreements, particularly the transfer of the telephone number. (Exhibit 1). More specifically, the Injunction Order stated:

> IT IS FURTHER ORDERED that Defendants Calvin Yeager, Valley Pizza, Inc., and Lakeside Pizza, Inc., and their agents, servants, and employees, and those persons and entities in active concert or participation or privity with any of them, are prohibited from violating and are specifically required to honor all post-term obligations contained in the Franchise Agreements, more specifically, to return the Operations Manual and Customer Lists to Domino's, to transfer the telephone numbers to Domino's, and otherwise to make the Stores assessable and available to Domino's or its designee to operate.

(Exhibit 1).

In an effort to obtain compliance with the Injunction Order, it was discovered that the franchise location owned and operated by Valley and Yeager had now become "Pronto Pizza," purportedly owned and operated by Matthew Mattlock. Thus, service of the Injunction Order was placed upon Valley, Yeager, Matthew Mattlock, Pronto Pizza Inc., and Reier Enterprises Inc., which was believed to be an owner of Pronto Pizza. (Exhibits 2 and 3). Mr. Mattlock accepted service for all parties, except Valley and Yeager, asserting that Yeager resides in California. (Exhibit 3).

After no such compliance was achieved with the Injunction Order, Domino's obtained a Final Judgment against defendants, which includes a permanent injunction for defendants to comply with the aforementioned provisions of the Franchise Agreements, particularly the telephone number which is specifically identified as 775-265-2929 ("Phone Number"). Service of the Final Judgment was made upon the defendants, Pronto Pizza and Mattlock on September 3, 2010. (Exhibit 4).

However, the Phone Number is still in use by Pronto Pizza at the former Domino's location. (Exhibit 5). Moreover, a recent review of information regarding Pronto Pizza, Inc. with the Secretary of State of Nevada shows that the officer and director of the corporation is Melissa Yeager.[1] (Exhibit 6). Finally, defendant Lakeside, a California corporation, operates a pizza restaurant under the fictitious firm name of "Pronto Pizza" as well. (Exhibit 7).

Since Valley is no longer operating the franchise location, the Operations Manual was never returned, nor the Customer List, and the Phone Number is being used by Pronto Pizza, and since it appears that Calvin Yeager is not available in the State of Nevada to enforce these aforementioned measures set forth by the Final Judgment, this motion has become necessary.

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[1] With the same last name as Calvin Yeager, it is assumed that there is a family connection; however, Domino's has not confirmed this.

ARGUMENT

I. ENFORCEMENT OF JUDGMENT UNDER RULES 70 AND 71

Fed.R.Civ.P. 70(a) provides that:

> if a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done – at the disobedient party's expense – by another person appointed by the court. When done, the act has the same effect as if done by the party.

Rule 70 gives the district court a discrete and limited power to deal with parties who thwart final judgments by refusing to comply with orders to perform specific acts. *Analytical Engineering Inc. v. Baldwin Filters, Inc.*, 425 F.3d 443, 449 (7th Cir. 2005).

Fed.R.Civ.P. 71 provides that:

> When an order grants relief for a nonparty or may be enforced against a nonparty, the procedures for enforcing the order is the same as for a party.

Thus, when an injunction is addressed to a nonparty and he is given notice of the injunction, Rule 71 permits a district court to use "the same processes for enforcing obedience to the order as if [he were] a party," such as holding him in contempt for violating it. *Irwin v. Mascott*, 370 F.3d 924, 931 (9th Cir. 2004).

II. SINCE MATTHEW MATTLOCK AND/OR MELISSA YEAGER ARE ACTING IN CONCERT WITH OR ARE IN PRIVITY WITH DEFENDANTS, THIS COURT MUST PROPERLY ORDER THEM TO PRODUCE THE OPERATIONS MANUAL, CUSTOMER LIST, AND TRANSFER THE PHONE NUMBER

In the case at bar, defendants have been served with the Final Judgment, but there has been no compliance to date. Valley and Yeager allegedly no longer operate the franchise location of Domino's, having apparently transferred the business to a new owner, Pronto Pizza Inc. However, there is evidence demonstrating the following: (1) the Phone Number is still in use by the Pronto Pizza business being operated by Matthew Mattlock (See, Exhibit 5); Pronto Pizza, Inc.'s officers and director is identified as Melissa Yeager, believed to be related to Calvin Yeager (See, Exhibit 6); and Lakeside is operating a similar pizza restaurant by the same name "Pronto Pizza" in California. (See, Exhibit 7). Thus, it appears that Matthew Mattlock and/or Melissa Yeager are working in concert or participation or are in privity with defendants Yeager, Valley, and Lakeside to circumvent the Injunction Order and now the Final Judgment. In turn, Rules 70 and/or 71 provide this Court the power to compel Matthew Mattlock and/or Melissa Yeager to satisfy the Final Judgment with respect to returning the Operations Manual, returning the Customer List, and transferring the Phone Number by (1) the appointment of either one of them – or preferably the both of them – to perform these acts because the defendants failed to do so, or (2) simply ordering each of them to do so as nonparty persons working in concert or participation or in privity with defendants.

CONCLUSION

Domino's is trying to enforce its Injunction Order and now its Final Judgment, which includes the acts of returning its Operations Manual, returning its Customer List, and transferring the Phone Number. Rather than defendants following these mandates, the defendants did the opposite under the guise of new ownership or new business names. Since it is apparent that Matthew Mattlock and Melissa Yeager are complicit in circumventing the Injunction Order and Final Judgment, an order compelling them to follow the aforementioned mandates is warranted. Simply put, Domino's is entitled to enforcement of the Injunction Order and Final Judgment, and Rules 70 and 71 can do just that. Therefore, Domino's respectfully requests this Court to grant its motion herein.

DATED this 24th day of September, 2010.

ARMSTRONG TEASDALE, LLP

By: ______________________

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CERTIFICATE OF SERVICE

I, Zabett Buzzone, declare that:

I am over 18 years of age and not a party to, or interested in, the within entitled action. I am an employee of Armstrong Teasdale, LLP located at 50 West Liberty Street, Suite 950, Reno, Nevada, 89501.

On, September 24, 2010 I served the following document:

MOTION TO ENFORCE JUDGMENT PURSUANT TO FRCP 70 AND/OR FRCP 71

[X] BY MAIL [N.R.C.P. 5(b)] I caused each envelope to be placed for deposit with the U.S. Postal Service in a sealed envelope, with postage prepaid, and that each envelope was placed for collection and mailing on that date following ordinary business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the U.S. Postal Service. Correspondence so collected and processed is deposited with the U.S. Postal Service that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit;

Calvin Yeager
987 Edgewood Circle
South Lake Tahoe, CA 96150

Melissa Yeager
1281 Kimmerling Road, Suite 18-A
Gardnerville, NV 89460

Pronto Pup Pizza
1281 Kimmerling Road, Suite 18-A
Gardnerville, NV 89460

Mathew Mattlock
1281 Kimmerling Road, Suite 18-A
Gardnerville, NV 89460

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Zabett Buzzone